

REMARKS / ARGUMENTS

Claims 1 - 10 and 18 - 21 are presented for Examiner's consideration. Pursuant to 37 C.F.R. § 1.111, reconsideration of the present application in view of the following remarks is respectfully requested.

Applicants note that the information disclosure statement filed on 07/08/02 was not considered by the Examiner. By way of a separate submission, the Applicants have prepared a new information disclosure statement containing the art not considered by the Examiner.

Claims 1, 5 - 6, and 8 stand rejected under 35 U.S.C. § 102(b) as anticipated by U.S. 5,354,132 issued to *Young* et al. *Young* discloses a bodily fluid disposal bag having two rectangular sheets bonded together about three peripheral edges and having a funnel disposed between the outer sheets as best seen in Figures 1 and 3.

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). To anticipate the claim, the reference must teach every element of the claim. See MPEP § 2131.01.

The Applicants respectfully traverse the Examiner's rejection since *Young* fails to teach the recited claim language of "the anti-splash member having at least one seam formed by joining the first and second opposing members together defining at least one aperture." Rather than seam the opposing members together, elements 12 and 14 of Figures 1 and 3 of *Young* as correlated by the Examiner in the Office Action, *Young* inserts a separate funnel element between the opposing members to form the aperture. Since *Young* fails to disclose that the opposing members can be seamed together to form the anti-splash member, claims 1, 5 - 6, and 8 are not anticipated by *Young*. As such, claims 1, 5 - 6, and 8 are in a condition for allowance by the Examiner.

Claims 2 - 4, 7, 9 - 10, and 18 - 20 stand rejected under 35 U.S.C. § 103(a) as being obvious over *Young* in view of U.S. 4,720,880 issued to *Barreau*. *Barreau* discloses a protective lining for a toilet that is shaped like a boat having an internal traverse partition for separating the urine from the defecation. See column 2, lines 20 - 41. *Barreau* discloses that the liner can be made with biodegradable materials; however, biodegradable is not defined nor is a specific example of a biodegradable material cited. At column 4, line 65, to column 5, line 2, *Barreau* discloses that to accelerate the destruction of the bag it can be coated with a bacterial type product that is rendered active by flushing water. Since *Barreau* chose not to define biodegradable in the specification, one of ordinary skill in the art must assume that *Barreau* intended the ordinary and customary meaning for the term "biodegradable." Biodegradable is defined by the American Heritage College Dictionary 3rd edition as "Capable of being decomposed by biological agents, esp. bacteria."

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicants' disclosure. See MPEP § 2143 citing *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

With regard to claims 2 - 4, 7, and 9 - 10, since they depend from claim 1 and claim 1 is in a condition for allowance, these claims are also in a condition for allowance. Additionally, the recited combination fails to teach or suggest all claim limitations; as such, a *prima facie* case of obvious has not been established. The proposed combination fails to teach or suggest the anti-splash member having at least one seam formed by joining the first and second opposing members together defining at least one aperture.

With regard to claims 18 - 20, a *prima facie* case of obvious has not been established since the recited combination fails to teach or suggest all the claim limitations. Specifically, the proposed combination fails to teach or disclose water degradable materials as claimed. In contrast to Barreau's biodegradable materials, the Applicants' claims recite a "water degradable material." Water degradable is defined in the specification at page four and several examples are provided. The Applicants' commode liner will disintegrate, disperse or dissolve in water, even distilled water that is entirely free of any microbes or bacteria. As such, it does not rely on the biodegradable materials Barreau teaches. The Applicants' claimed materials will first break up or disintegrate due to water alone, without any biological decomposition required. The materials may then later decompose from the action of biological agents; although, such decomposition is not required. As such, claims 18 - 20 are not obvious over the cited art and are in a condition for allowance.

Claim 21 stands rejected under 35 U.S.C. § 103(a) as obvious over *Young* in view of *Barreau* and further in view of U.S. patent 5,674,578 issued to *Giori*. As noted on page 7, line 21, of the Applicants' specification, *Giori* was incorporated by reference into the Applicants' specification and identified as a suitable water degradable material.

The Applicants respectfully traverse the Examiner's rejection of claim 21 since a *prima facie* case of obvious has not been established. In addition to the above arguments in relation to *Young* and *Barreau*, the Applicants dispute that the teaching or suggestion to make the claimed combination and the reasonable expectation of success was found in the prior art and not based on applicants' disclosure. The teaching or suggestion to use water degradable materials is not

found in either *Young* or *Barreau* and instead is based specifically on the Applicants' disclosure. As such, a proper *prima facie* case of obvious has not been established.

For the reasons stated above, it is respectfully submitted that all of the presently presented claims are in form for allowance. Additionally, withdrawn claims 22 - 27 are also believed to be in a condition for allowance since they depend on claim 1. As such claims 1 - 10, and 18 - 27 are allowable and such action is requested by the Applicants. Please charge any prosecutorial fees which are due to Kimberly-Clark Worldwide, Inc. deposit account number 11-0875. The undersigned may be reached at (920) 721 - 7760.

Respectfully submitted,

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CERTIFICATE OF MAILING

I, Lanette Burton, hereby certify that on December 29, 2003, the aforementioned documents are being deposited with the United States Postal Service as first-class mail, postage prepaid, in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

By: Lanette Burton

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